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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,491	06/25/2003	Donald E. Weder	8403.917	3540
30589	7590	10/18/2005	EXAMINER	
DUNLAP, CODDING & ROGERS P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113			AHMAD, NASSER	
			ART UNIT	PAPER NUMBER
			1772	
DATE MAILED: 10/18/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/603,491

Applicant(s)

WEDER, DONALD E.

Examiner

Nasser Ahmad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11, 13-21, 23-30 and 32-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-21, 23-30 and 32-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Rejections Withdrawn***

1. Claims 1-2, 5-11, 14-21, 24-30, 33-44, 46-52 and 54-61 are rejected under 35 U.S.C. 103(a) as being obvious over Weder (6742316) in view of Applicant's admission in the IDS filed on October 22, 2004 made in the last Office Action has been withdrawn in view of the amendment filed on July 25, 2005.
2. Claims 4, 13, 23, 32, 45 and 53 are rejected under 35 U.S.C. 103(a) as being obvious over Weder in view of Applicant's admission in IDS of October 22, 2004 has been withdrawn in view of the amendment.
3. Claims 1-61 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter has been withdrawn in view of the amendment.

### ***Allowable Subject Matter Withdrawn***

4. Claims 63, 12, 22 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable has been withdrawn in view of the newly uncovered prior arts.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-11, 13-21, 23-30 and 32-65 have been considered but are moot in view of the new ground(s) of rejection.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-11, 13-21, 23-30 and 32-65 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-55 of U.S. Patent No. 6387463. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the application and the Patent are directed to a matte finish decorative flower pot cover. However, the Patent fails to teach a method including the step of selling and delivering the sheet. It would have been obvious to one having ordinary skill in the art to modify the Patent'463 by providing the method including the step of selling and delivering the sheet because for its use as a flower pot cover.

8. Claims 1-11, 13-21, 23-30 and 32-65 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of

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U.S. Patent No. 6495248. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the application and the Patent as directed to a flower pot cover and a method of providing the sheet, and selling and delivering it to a customer would have been obvious as discussed above.

9. Claims 1-11, 13-21, 23-30 and 32-65 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-20 of U.S. Patent No. 6565963. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the application and the Patent are directed a flower pot cover and a method of providing the sheet, and selling and delivering it to a customer would have been obvious as discussed above.

10. Claims 1-11, 13-21, 23-30 and 32-65 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6702919. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the application and the Patent are directed to a flower pot cover. It would have been obvious to provide the cover made by the process of the Patent to a customer by selling and delivering it as discussed above.

11. Claims 1-11, 13-21, 23-30 and 32-65 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6723417. Although the conflicting claims are not identical, they are

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not patentably distinct from each other because both the application and the Patent are directed to a flower pot cover and a method of providing the sheet, and selling and delivering it to a customer would have been obvious as discussed above.

12. Claims 1-11, 13-21, 23-30 and 32-65 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-90 of copending Application No. 09/929796. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the applications are directed to a flower pot cover and a method of providing the sheet, and selling and delivering it to a customer would have been obvious as discussed above.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

13. Claims 1-11, 13-21, 23-30 and 32-65 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-44 of copending Application No. 10390280. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the applications are directed to a flower pot cover and a method for providing the sheet. The step of selling and delivering the sheet would have been obvious as discussed above.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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14. Claim 1-11, 13-21, 23-30 and 32-65 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-35 of copending Application No. 11/079953. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the applications are directed to a flower pot cover and a method of providing the sheet. The step of selling and delivering the sheet to a customer would have been obvious as discussed above.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

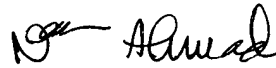
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser Ahmad whose telephone number is 571-272-1487. The examiner can normally be reached on 7:30 AM to 5:00 PM, and on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Nasser Ahmad 10/16/05  
Primary Examiner  
Art Unit 1772

N. Ahmad.  
October 16, 2005.